Review of Licensing Requirements for Residential Substance Abuse Treatment Centers

From: Mary P. Castelli, Senior Division Director, DHHS

To: Governor Maggie Hassan and DHHS Commissioner Nicholas A. Toumpas

Re: Report on Licensing Requirements for Residential Substance Abuse Treatment Centers

Date: September 30, 2015

Introduction

On August 12, 2015, Governor Maggie Hassan and DHHS Commissioner Nicholas A.Toumpas requested a review of the Licensing Requirements for Residential Substance Abuse Treatment Centers in light of the State's demand for increased substance abuse treatment services and concerns raised by residential treatment centers seeking to add additional capacity or to become licensed. The balance to be achieved must ensure that residential treatment centers are safe for their residents and staff, while also ensuring that regulations do not erect unnecessary barriers to new substance abuse treatment options.

Background

NH has experienced a growing heroin and prescription drug addiction epidemic that along with abuse of other substances has led to increased demand for substance abuse treatment options. NH provides individuals with an array of substance abuse treatment services, including withdrawal management services, outpatient services, residential services, and recovery support services.

With the advent of the NH Health Protection Plan (NH HPP) and its providing a substance use disorder (SUD) benefit (not covered by the traditional Medicaid program), an important new source of funding became available to treat individuals with substance abuse disorders. One important treatment tool is a structured program that helps individuals overcome addiction with the type of supports provided within a residential setting. To enroll as a Medicaid provider, facilities must meet state licensing requirements.

The Bureau of Drug and Alcohol Services (BDAS) did not require licensing for "low intensity" treatment programs under its grants. However, facilities that offer services beyond room and board, such as medication management, are typically subject to licensure. See RSA 151:2, I (e). Licensing requirements are contained in RSA 151 and DHHS He-P 807 rules for Residential Treatment and Rehabilitation Facilities (RTRF's).

The current set of administrative rules that govern residential SUD providers would benefit from review and revision, in part, because they apply to two very diverse types of facilities with different treatment services. The He-P 807 rules govern not only residential substance abuse treatment providers, but also residential programs for complex populations with traumatic brain and neurological injuries and severe developmental disabilities. The He-P 807 rules date back to 1981. In 2009, the rules were revised to increase bedroom double occupancy square footage requirements from 140 square feet to 160 square feet. The 140 square footage bedroom double occupancy requirement dates back to, at least, 1993. Current standards may not be necessary for both population types.

The typical duration of the stay and the needs of these two very different populations served by RTRF's are quite different. A person admitted to a residential SUD facility might stay

30 days in some programs and approximately 90 days for other SUD programs. The duration of a stay for a residential program for individuals with traumatic brain and neurological injuries and severe developmental disabilities can be significantly longer and the RTRF's serve as the individuals' home until the individuals are discharged, as appropriate, to their home states and/or to more community based programs. Individuals staying at a residential SUD program frequently use their bedrooms mainly to sleep at night and are engaged in active programming or, in some programs, are working during the day.

The Review Process

In carrying out this review, the following steps were taken:

- A meeting hosted by the Governor's Office was held on August 28, 2015 and was attended by providers and stakeholders including executive directors of residential substance abuse provider organization; the Executive Director of NH Alcohol and Other Drug Services Providers Association; New Futures Policy Director; the Governor's Policy Director; the Governor's Senior Director for Substance Misuse and Behavioral Health; and the DHHS Senior Division Director.

- A forum was held on September 8, 2015 at DHHS to discuss licensing requirements for Residential Substance Abuse Treatment Centers. This meeting was attended by Residential Substance Abuse providers; the NH State Fire Marshal; New Futures Policy Director; the Governor's Senior Director for Substance Misuse and Behavioral Health; DHHS Licensing and Certification Manager; the DHHS Fire/Life Safety inspections supervisor; and the DHHS Senior Division Director.

- On August 19, 2015, a survey was sent soliciting comments about DHHS licensing requirements and processes. It was sent to all licensed and all known unlicensed residential substance abuse treatment providers; the State Fire Marshal; and substance abuse treatment advocacy organizations.

- A review was conducted of the DHHS licensing requirements for residential substance abuse treatment centers, He-P 807;

- A comprehensive review was conducted of other states' licensing requirements for residential substance abuse treatment centers.

- Representatives of DHHS and the Governor's Substance Misuse Director conducted on-site tours of six diverse residential substance use disorder providers, including licensed and unlicensed, and providers with pending applications. Locations visited included Manchester, Franklin, Lebanon and Bethlehem, NH. Additional tours are scheduled to take place after the date of this report.

Service Capacity

FACILITY NAME	CITY	STATE	BEDS	INITIAL LICENSURE DATE
FRIENDSHIP HOUSE RETREAT CENTER	BETHLEHEM	NH	18	6/19/1995
PHOENIX HOUSE/MARATHON CENTER	DUBLIN	NH	49	12/6/1999
PHOENIX HOUSE KEENE CENTER	KEENE	NH	15	12/6/1999
WESTBRIDGE COMMONS	MANCHESTER	NH	12	7/20/2005
KEYSTONE HALL	NASHUA	NH	54	3/7/2012
FARNUM CENTER	MANCHESTER	NH	60	4/29/2013
NEW FREEDOM ACADEMY	CANTERBURY	NH	20	8/14/2015
LICENSED IN THE LAST 6 MONTHS				
NEW FREEDOM ACADEMY	CANTERBURY	NH	See above	See above
PENDING LICENSE APPLICATIONS				**Date application submitted**
HEADREST	LEBANON	NH	8	1/16/15*
FARNUM CENTER NORTH	FRANKLIN	NH	42	8/20/15
APPLICATIONS NOT SUBMITTED				
SERENITY PLACE	Manchester	NH	26	
SERENITY PLACE	Manchester	NH	14	
SOUTHEASTERN NH SERVICES	Dover	NH	26	

Currently, there are 7 licensed residential SUD providers with 228 beds and two pending applications with a total of 50 beds. Regarding future beds, Easter Seals has announced its intent to renovate a property located in Franklin by February 2016, adding an additional 20 licensed residential SUD beds.

*Application pending compliance with fire/life safety code requirements.

Comparison of Other States' Requirements for Bedroom Square Footage

The information below is a comparison of other states' requirements for bedroom square footage, standardized to reflect double occupancy. A number of states allow multiple occupancy with a per person square footage that is equivalent to the double occupancy figures in this document.

90 Square foot, double occupancy –1 State

ID

100 Square foot, double occupancy –3 States

MA, NV, NJ

120 Square foot, double occupancy – 17 States

AZ, FL, GA, IL, IN, LA, MD, MO

MT, NY, ND, OK, OR, PA, UT, WV, WIS

140 Square foot, double occupancy – 5 States

AK, CO, HI, ME*, OH

150 Square foot, double occupancy – 1 State

SD

160 Square foot, double occupancy – 10 States

AR, DE, KS, KY, MI

NH, MN, NC, SC, TN

200 Square foot, double occupancy – 2 States

CT, VT

* ME - licensed after 1998- 80 sq. feet per person multiple occupancy or 160 sq. feet for double. Licensed before 1998 – 70 sq. feet per person multiple occupancy or 140 sq. feet for double.

Observations

At the meeting of residential substance use providers, several residential providers expressed significant concern that the bedroom square footage requirements of 160 square feet double occupancy was too strict a requirement and adherence would cause them to lose beds. Others, who were considering expanding their programs, felt that if the square footage requirement were to be reduced for some, it should be reduced for all. The group uniformly agreed that 120 square feet for a bedroom at double occupancy was an appropriate level. They asked that going forward DHHS consider revising its rules to reduce the bedroom square footage requirement in rules but for now requested that the Department waive this rule provision for newly applying programs, and announce its intent to extend this waiver for programs that are considering expanding and who must renovate or construct in accord with bedroom square footage licensing requirements.

With respect to safety requirements, the providers unanimously agreed that they are not seeking waiver of fire/life safety requirements. The advocates and stakeholders also agreed that fire/life safety requirements should be maintained in order to ensure the safety and well-being of clients and staff at licensed residential programs.

Tours of the programs demonstrated the depth of commitment by these programs to serve clients recovering from addiction. However, the on-site visits and additional conversations with providers and stakeholder showed that reducing bedroom square footage requirements would not eliminate the most significant barriers to licensing. Providers are constrained by available financial resources from investing in physical properties. This has resulted in a number of the buildings utilized as unlicensed spaces, as being old structures that do not meet fire/life safety requirements. It may take significant investment and time for these programs to comply with the fire/life safety codes.

Survey Results

A survey requesting comments on licensing requirements for residential substance abuse treatment programs was issued to 15 persons, including 11 providers, consisting of all 7 licensed programs and three unlicensed providers. Responses were received from 9 persons, including 7 licensed and unlicensed providers.

No concerns were raised in the responses with respect to the clinical requirements of the rule. No concerns were raised regarding food services requirements. With regard to sanitation requirements, two respondents stated they did not meet the toilet to bedrooms ratios. One of these also noted that significant upgrades of its bathrooms were needed and they might not meet ADA (American with Disability) requirements. With regard to physical environment requirements, three respondents raised concerns about meeting bedroom square footage.

When asked whether they experienced delays in licensing processes, five respondents indicated they had not experienced delays, while three indicated that they had.

With regard to the most significant barrier to licensing, respondents strongly agreed that it was the lack of financial resources. One stated, "it is so difficult to find appropriate, safe buildings and then to meet all the life safety requirements within any reasonable budget that meets safety and provides a relatively decent place for people to get better."

Several emphasized that being housed in old buildings that require expensive renovations is a major issue. One stated, "our building was built in the 1900's and is very old. We basically need an overhaul of renovations to keep our . . . program running." The respondent further indicated that without these renovations, the threat of needing to close down an excellent and long standing program is very real.

With regard to funding, several providers stated that they are very concerned about whether or not the NH HPP will be reauthorized. Without this important funding source for SUD benefits, the providers felt they would lack the necessary funds to invest in complying with licensing requirements.

Several respondents indicated that it was confusing to determine exactly what was necessary to comply with fire/life safety requirements at the local as well as state levels, while another respondent stated that the applicants, not reaching out to government to communicate about options to meet regulations created a barrier to their understanding licensure requirements.

One provider noted that the lack of funding for state employee positions and its impact on staff resources limits DHHS's ability to manage ongoing programs and to give new programs sufficient assistance to get on-line quickly.

Several noted difficulties in achieving handicap accessibility. One stated that licensure requirements for furniture, the number of persons per bedroom, and the toilet to bedroom ratio represented its most significant barriers to licensure.

Providers observed that the problem of dealing with local resistance from communities, or "not in my backyard" for these programs created serious obstacles for providers and the clients they serve.

Fire and Building Code Requirements and Variances

Licensed residential SUD providers must meet the 2009 edition of the NFPA 101 Fire and Life Safety Code, which is incorporated by reference into the State Fire Code. Programs that provide medical detoxification services may have to meet more restrictive building and fire code requirements. Medical detoxification is a medically supervised process of helping individuals through withdrawal from an abused substance.

When a prospective SUD facility requests a license, it must describe its proposed scope of practice. The scope of practice determines the applicable sections of the State Building and Fire codes. The less restrictive Residential Board and Care Occupancy Chapter of NFPA 101, the life safety code, 3.3.178.12 applies in "facilities for social rehabilitation, alcoholism, drug abuse, or mental health problems that contain a group housing arrangement and that provide personal care services **but do not provide acute care**." (Emphasis added). The more restrictive NFPA 101, 3.3.178.7 Health Care Occupancy applies to hospitals and certain "limited care facilities." NFPA 101, 3.3.82.2 Limited Care Facilities includes "a building or portion of a building used on a 24-hour basis for the housing of four or more persons who are incapable of self-preservation because of age; physical limitations due to accident or illness; or limitations such as mental retardation/developmental disability, mental illness, or chemical dependency." A program serving residents who are not yet medically stable and medically cleared may be proving medical detoxification services and be subject to the more restrictive building and fire codes accordingly.

The State Fire Marshal has jurisdiction over the State fire code and the granting of variances. A variance request is submitted on a designated form to the State Fire Marshal's Office. The NH State Fire Marshal can grant a variance or exception to the State fire code to the extent that such action will provide a degree of safety substantially equivalent to that provided under the provisions for which the variance or exception is granted. The decision of the State Fire Marshal may be appealed to the State Building Code Review Board.

Recommendations and Conclusions

Providers have requested that the bedroom, double occupancy, square footage requirement be waived from the current 160 square feet requirement to 120 square feet for providers currently providing services, whether licensed or not. The most common standard for bedroom square footage requirements among other states is 120 square feet, with 17 states using this standard and four using a smaller size. Ten states use the 160 square foot requirement, with two requiring a larger size. Five states require 140 or 150 square feet double occupancy.

Reducing the bedroom square footage requirement in the rule for SUD providers to 120 square feet double occupancy is reasonable. He-P 807 rules were designed to cover two quite different types of facilities – those that serve clients receiving drug and alcohol treatment as compared to clients suffering from traumatic brain injuries. The duration of the stay at a residential SUD treatment program lasts from 30 days to 90 days, while the stay for the latter populations is considerably longer. While a room that is 120 square feet double occupancy may be on the small side, the bedrooms at residential SUD providers are primarily used for sleep, with programming or work occupying these clients during the day. Using this standard for all licensed SUD providers creates a consistent standard that is fair to all providers. As licensing is a minimum standard, providers may, of course, provide more spacious bedrooms. In the interim, DHHS Health Facilities Licensing Unit (HFLU) will be receptive to waiver requests on bedroom

square footage requirements consistent with this view. HFLU will work with stakeholders to revise the He-P 807 rules with regard to residential SUD providers.

Issues about other licensing requirements, such as toilet to bedroom ratios, furniture, multiple occupancies for bedrooms, are more appropriately handled on a case by case basis using the waiver process.

Waiving fire and life safety codes presents a very different issue from other physical environment requirements, however, as it impacts the well-being of clients and staff. Adherence to these codes is essential to protecting the safety of residents. Complying with the fire and life safety codes or obtaining waivers may present significant expense and time demands for providers. The State Fire Marshal has expressed his willingness to work closely with residential SUD providers, in determining whether a variance is available which will provide a degree of safety substantially equivalent to that provided under the code. These matters will need to be handled on a case by case basis.